IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2428 OF 2006

Deepak Kamble
Proprietor of Hotel China Gate ..Petitioner.
Vs.
State of Maharashtra & Ors. ..Respondents.

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Mr. S.V. Sadavarte for the Petitioner.
Ms. Geeta Shastri, AGP for the State.

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CORAM: DR. D.Y. CHANDRACHUD, J.

25th September, 2006.

P.C. :

1. The Petitioner is conducting a restaurant and bar at Malad (West), Mumbai. The Petitioner holds an FL III licence under the Bombay Prohibition Act, 1949. The licence was issued to the Petitioner on 19th February, 1997 under the Bombay Police Act, 1951 in respect of a place of public entertainment. The licence was renewed until 31st March, 2003. A notice to show cause was issued to the Petitioner on 31st March, 2004 calling upon him to show cause as to why action be not taken for a breach of the conditions of licence. The notice to show cause inter alia adverts

to the following breaches :

"(A) Three cases under section 33(W) and four cases under Section 110 of the Bombay Police Act for the period 09.04.2003 till 19.07.2003.

(B) One case under section 294, r/w. 66(1)(b) of I. P. C. and one case under section 3, 4, 5, 7 and 8 (b) of PITA.

(C) Breach of Rule 7A 8(1) and 8(2) of the license rules.

(D) Breach of Rule 21(A) and 23 of the said rules."

2. The Petitioner filed a reply to the notice to show cause. On 16th September, 2004, an order was passed by the Third Respondent, who is a Deputy Commissioner of Police, suspending the licence of the Petitioner for a period of 15 days. The Petitioner filed an appeal and since it was not being disposed of, he moved this Court in a writ petition. By an order dated 21st October, 2004 the Appellate Authority was directed to dispose of the appeal and in the meantime the operation of the order impugned was stayed. On 29th October, 2005 an order was passed by the Appellate Authority dismissing the appeal. However, the Appellate authority, in the appeal filed by the Petitioner enhanced the penalty and

directed that the licence be cancelled. The order was challenged before this Court in a writ petition and on 24th November, 2005 the order of the Appellate Authority was quashed and set aside and the proceedings were remitted back for a fresh decision. Thereupon the Appellate Authority has passed an order on 7th August, 2006 confirming the order of suspension for a period of 15 days.

3. On behalf of the Petitioner it has been submitted that the notice to show cause merely referred to the pendency of certain cases against the Petitioner. Learned counsel submitted that the mere pendency of a criminal case could not be regarded as a breach of the conditions of licence. There is merit in the aforesaid submission. In Padma N. Kokarne (M/s. Pooja Bar & Restaurant) v. The Commissioner of Police, Mumbai (Writ Petition 1181 of 2004) which I had occasion to decide on 17th June, 2004, the following observations were made in the order of the Court:

> "Now it is a well settled principle of law that the mere pendency of a criminal case cannot be regarded as ground enough for drawing a presumption of guilt. The charges which are framed in the course of the criminal trial have to be proved in the course of the trial beyond reasonable doubt. Hence, the authorities are not

> justified in relying upon the mere pendency of a criminal case to hold that there has been a breach of the licence conditions. Equally, it is necessary for the Court to clarify that even during the pendency of a criminal case the authorities are not foreclosed from proceeding against the licence holder for breach of the licence conditions. The action for the breach of the licence conditions under the Bombay Police Act stands on a completely different footing from a criminal prosecution for an offence against the penal law of the land. But while it is open to the authorities to proceed against the licence holder if there is a breach of the conditions governing the licence, that breach must be established by cogent material. In the present case, the Deputy Commissioner of Police erroneously proceeded on the basis that a mere allegation in the show cause notice constituted a breach. Such an approach is unsustainable."

4. In the present case, on behalf of the State, the learned AGP has submitted that apart from the pendency of the criminal cases, it was found that the licence holder was in breach of the requirements contained in Rules 8(1) and 8(2). It was found that without the permission of the licensing authority the Petitioner had allowed the business to be conducted by unauthorized persons whose names are disclosed in the show cause notice. There is merit in the submission urged on behalf of the State, that in the reply which was filed on behalf of the Petitioner, there is no denial

specifically of the allegation that the business was conducted by unauthorized personnel. In the affidavit in reply filed on behalf of the State by Sanjay Laxman Kadam, Inspector of Police a reference has been made to the result of the pending cases against the Petitioner, and Sr. Nos.7, 8 and 9 were cases registered under Section 33(w) of the Bombay Police Act, 1951 on the charge that the activities of the hotel have been conducted by an unauthorized person and the establishment was kept open beyond the prescribed time limit. All the three cases resulted in a forfeiture of the bail bonds. In fact, it would appear from the charge that there is a similar forfeiture of the bail bonds in the four other cases at Sr. Nos. 3, 4, 5 and 6 (listed out in Annexure 1 to the affidavit in reply) where the Petitioner was charged under Section 110 of the Bombay Police Act, 1951 of indecent behaviour. Thus, while there is merit in the submission urged on behalf of the Petitioner that the mere pendency of a criminal prosecution cannot be regarded as proof of the breach of the conditions of licence, the facts of the present case stand on a different footing, at least in so far as the charge that the Petitioner had allowed the business to

be conducted by unauthorized persons. There is no denial by the Petitioner of the fact that when the premises were inspected on behalf of the licensing authority, two unauthorized persons by the name of Nitin Shankar Kadam and Pradeep Narayan Shetty who were conducting the business were found there.

5. The show cause notice was a composite notice that was issued in respect of a series of violations. Of the violations it would appear that the violation relating to the carrying on of the business by an unauthorized person which has been pressed before the Court by the learned AGP is established. Having regard to all the facts and circumstances while the order of suspension of the licence is sustainable, the order imposing penalty would have to be suitably modified so as to be commensurate with the aforesaid breach which is found to be established. The order of suspension is accordingly modified by directing that the period of suspension shall operate for a period of one week. Subject to the aforesaid modification, the Petition is disposed of.